

APPENDIX
Additional Guidelines Or Suggested Practices

PART VIII: JUDICIAL PROCEEDINGS

PRELIMINARY PROTECTIVE ORDERS IN CASES OF FAMILY ABUSE

Va. Code §§ 16.1-253.1 (Preliminary protective orders in cases of family abuse) 16.1-253.4 (Emergency protective orders authorized in certain cases) and 16.1-279.1 (Protective orders in cases of family abuse) are incorporated into the policy manual for reference. The purpose of these protective orders is specifically to address domestic violence. The local department does not have standing to petition a court for the issuance of a protective order pursuant to Va. Code §§ 16.1-253.1, 16.1-253.4 and 16.1-279.1.

Va. Code § 16.1-253.1(A). Preliminary protective orders in cases of family abuse; confidentiality.

A. Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred shall constitute good cause. A preliminary protective order may include any one or more of the following conditions to be imposed on the allegedly abusing person:

1. Prohibiting acts of family abuse.
2. Prohibiting such other contacts between the parties as the court deems appropriate.
3. Prohibiting such other contacts with the allegedly abused family or household member as the court deems necessary to protect the safety of such persons.
4. Granting the petitioner possession of the premises occupied by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession shall affect title to any real or personal property.
5. Granting the petitioner temporary possession or use of a motor vehicle jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.
6. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and any other family or household member, where appropriate.

1.0 Family Members May Petition the Court to Issue a Preliminary Protective Order to Protect Family Members

Any person who has been subjected to family abuse may petition the court to issue a preliminary protective order to protect that person and any other family members from further abuse or domestic violence. The abuse must have

APPENDIX
Additional Guidelines Or Suggested Practices

occurred within a reasonable time of the filing of the petition. The court may issue a preliminary protective order against the allegedly abusing person to protect the health and safety of the petitioner and any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Good cause means the immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred.

2.0 The Court's Authority

The court may issue a preliminary protective order imposing any one or more of the following conditions on the allegedly abusing person:

- a. Prohibiting acts of family abuse.
- b. Prohibiting such other contacts between the parties as the court deems appropriate.
- c. Prohibiting such other contacts with the allegedly abused family or household member as the court deems necessary to protect the safety of such persons.
- d. Granting the petitioner possession of the premises occupied by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession shall affect title to any real or personal property.
- e. Granting the petitioner temporary possession or use of a motor vehicle jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.
- f. When appropriate, requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and any other family or household member.

3.0 Name of Alleged Abuser to be Entered Into Virginia Criminal Information Network

Va. Code 16.1-253.1(B). Upon receipt of the order by a local law-enforcement agency for service, the agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia

APPENDIX
Additional Guidelines Or Suggested Practices

Criminal Information Network system established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network system. A copy of a preliminary protective order shall be served as soon as possible on the allegedly abusing person in person as provided in § [16.1-264](#), and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network system. The preliminary order shall specify a date for the full hearing. The hearing shall be held within fifteen days of the issuance of the preliminary order. However, upon motion of the respondent and for good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § [16.1-264](#), the clerk shall forward forthwith an attested copy of the preliminary protective order to the local police department or sheriff's office which shall, upon receipt, enter into the Virginia Criminal Information Network system any other information required by the State Police which was not previously entered. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered in the Virginia Criminal Information Network system as described above.

4.0 Preliminary Order Effective Upon Service

Va. Code § 16.1-253.1(C). The preliminary order is effective upon personal service on the allegedly abusing person. Except as otherwise provided in §16.1-253.2, a violation of the order shall constitute contempt of court.

5.0 Full Hearing on the Petition

Va. Code § 16.1-253.1(D). At a full hearing on the petition, the court may issue a protective order pursuant to §16.1-279.1 if the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the evidence.

APPENDIX
Additional Guidelines Or Suggested Practices

E. EMERGENCY PROTECTIVE ORDERS (EPO) IN CASES OF FAMILY ABUSE

1.0 Statutory Authority

Va. Code §16.1-253.4(A). Emergency protective orders authorized in certain cases; confidentiality.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

Any judge or magistrate may issue an emergency protective order to protect the health and safety of any person in accordance with Va. Code § 16.1-253.4. The emergency protective order may be issued ex parte, either in writing or orally.

2.0 A Police Officer or the Allegedly Abused Person May Petition the Court and Must Testify to the Circumstances

Va. Code § 16.1-253.4(B). When a law enforcement officer or an allegedly abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate finds that (i) a warrant for a violation of § 18.2-57.2 has been issued and there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent, the judge or magistrate shall issue an ex parte emergency protective order , except if the respondent is a minor an emergency protective order shall not be required, imposing one or more of the following conditions on the respondent:

1. Prohibiting acts of family abuse;
2. Prohibiting such contacts by the respondent with family or household members of the respondent as the judge or magistrate deems necessary to protect the safety of such persons; and
3. Granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property.

Please note, a law-enforcement officer or the person subjected to the family abuse may petition the court for the issuance of an emergency protective order in cases of domestic violence. The law-enforcement officer or the allegedly abused person must testify to the circumstances demanding the issuance of the emergency protective order under oath to the judge or magistrate.

APPENDIX
Additional Guidelines Or Suggested Practices

2.1 Circumstances that Must Exist for EPO to be Issued

The judge or magistrate must find one of the following circumstances exist in order to issue the emergency protective order:

- a. A warrant for a violation of § 18.2-57.2 has been issued and there is probable danger of further acts of family abuse against a family or household member by the respondent; or
- b. Reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent.

2.2 Court's Authority

If the judge or magistrate finds one of the above circumstances exists, then the judge or magistrate may issue an ex parte emergency protective order imposing one or more of the following conditions on the respondent:

- a. Prohibiting acts of family abuse;
- b. Prohibiting such contacts by the respondent with family or household members of the respondent as the judge or magistrate deems necessary to protect the safety of such persons; and
- c. Granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property.

3.0 Duration of Emergency Protective Order

Va. Code § 16.1-253.4(C). An emergency protective order issued pursuant to this section shall expire seventy-two hours after issuance. If the expiration of the seventy-two-hour period occurs at a time that the court is not in session, the emergency protective order shall be extended until 5 p.m. of the next business day that the juvenile and domestic relations district court is in session. The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

APPENDIX
Additional Guidelines Or Suggested Practices

4.0 Law-Enforcement May Request EPO Orally, In Person, or by Electronic Means

Va. Code § 16.1-253.4(D). A law-enforcement officer may request an emergency protective order pursuant to this section and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § 16.1-253.1 or § 16.1-279.1, may request the extension of an emergency protective order for an additional period of time not to exceed seventy-two hours after expiration of the original order. The request for an emergency protective order or extension of an order may be made orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order...

5.0 Name of Alleged Abuser to be Entered Into Virginia Criminal Information Network

Va. Code § 16.1-253.4(E). Upon receipt of the order by a local law-enforcement agency for service, the agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network System established and maintained by the Department pursuant to Chapter 2 (§52-12 et seq.) of Title 52. A copy of an emergency protective order issued pursuant to this section shall be served upon the respondent as soon as possible, and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network System. One copy of the order shall be given to the allegedly abused person when it is issued, and one copy shall be filed with the written report required by §19.2-81.3 C. The original copy shall be filed with the clerk of the juvenile and domestic relations district court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall be forwarded and entered in the system as described above. Upon request, the clerk shall provide the allegedly abused person with information regarding the date and time of service.

6.0 EPO Not Affected by Fact Family Left Premise to Avoid Danger

Va. Code § 16.1-253.4(F). The availability of an emergency protective order shall not be affected by the fact that the family or household member left the premises to avoid the danger of family abuse by the respondent.

7.0 Issuance of EPO Not Evidence of Any Wrongdoing

Va. Code § 16.1-253.4(G). The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.

APPENDIX
Additional Guidelines Or Suggested Practices

This Code section means that, although the court may have issued an emergency protective order against a person, the court order does not mean the person committed the alleged act. A full hearing on the matter must be conducted to determine whether the alleged act occurred.

8.0 Definition of Law-Enforcement Officer

Va. Code § 16.1-253.4(H). As used in this section, a "law-enforcement officer" means any (i) full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth and (ii) member of an auxiliary police force established pursuant to subsection B of §15.2-1731. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

9.0 Definition of Copy Includes Fax

Va. Code § 16.1-253.4(J). As used in this section, "copy" includes a facsimile copy.

F. PROTECTIVE ORDERS IN CASES OF FAMILY ABUSE

1.0 Statutory Authority

Va. Code §16.1-279.1(A). Protective order in cases of family abuse.

A. In cases of family abuse, the court may issue a protective order to protect the health and safety of the petitioner and family or household members of the petitioner. A protective order issued under this section may include any one or more of the following conditions to be imposed on the respondent:

1. Prohibiting acts of family abuse;
2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons;
3. Granting the petitioner possession of the residence occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property;
4. Granting the petitioner temporary possession or use of a motor vehicle jointly owned by the parties to the exclusion of the respondent; however, no such grant of possession or use shall affect title to the vehicle;
5. Requiring that the respondent provide suitable alternative housing for the petitioner and, if appropriate, any other family or household member;
6. Ordering the respondent to participate in treatment, counseling or other programs as

APPENDIX
Additional Guidelines Or Suggested Practices

the court deems appropriate; and

7. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner, including a provision for temporary custody or visitation of a minor child.

In cases of family abuse, the person petitioning the court for the issuance of the protective order must be a family or household member. Va. Code § 16.2-279.1(A) identifies the conditions the court may impose.

2.0 Duration of Protective Order

Va. Code § 16.1-279.1(B). The protective order may be issued for a specified period; however, unless otherwise authorized by law, a protective order may not be issued under this section for a period longer than two years. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The clerk upon receipt shall forward forthwith an attested copy of the order to the local police department or sheriff's office which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network System established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network System. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered in the system as described above.

The court may specify the duration of the protective order, not to exceed two years. A copy of the protective order must be served on the respondent (the alleged abuser) and provided to the petitioner (the alleged victim) as soon as possible. § 16.1-279(B) also requires the court clerk to forward a copy of the order to the local police department or sheriff's office. The local police or sheriff's office will enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia criminal information network system. If the order is later dissolved or modified, then that information must be forwarded and entered in the system as described above. If the circumstances that warranted the local department petitioning the court for the order change and the local department is no longer involved with the family, the local department should notify the court.

3.0 Violation of Court Order Constitutes Contempt of Court

Va. Code § 16.1-279.1(C). Except as otherwise provided in §16.1-253.2, a violation of a protective order issued under this section shall constitute contempt of court.

APPENDIX
Additional Guidelines Or Suggested Practices

4.0 Court Costs & Attorney's Fees

Va. Code § 16.1-279.1(D). The court may assess costs and attorneys' fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.

5.0 Other State Court Orders Given Full Faith & Credit

Va. Code § 16.1-279.1(E). Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person entitled to protection under such a foreign order may file the order in any juvenile and domestic relations district court or family court by filing with the court an attested or exemplified copy of the order. Upon such a filing, the clerk shall forward forthwith an attested copy of the order to the local police department or sheriff's office which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network System established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network System. Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy available of any foreign order filed with that court. A law-enforcement officer may, in the performance of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been provided to him by any source and may also rely upon the statement of any person protected by the order that the order remains in effect.

This section of the Code means that a court order analogous to Va. Code § 16.1-279.1 rendered in another state will be recognized and enforced in Virginia if it meets certain requirements. The court issuing the order must have had appropriate jurisdiction. The order must have been issued for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A. Proper notice and service must have been provided.

APPENDIX
Additional Guidelines Or Suggested Practices

6.0 Either Party May Request Dissolution or Modification of Protective Order

Va. Code § 16.1-279.1(F). Either party may at any time file a written motion with the court requesting a hearing to dissolve or modify the order. Proceedings to dissolve or modify a protective order shall be given precedence on the docket of the court.

7.0 Copy Includes Fax

Va. Code § 16.1-279.1(G). As used in this section, "copy" includes a facsimile copy.